IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.876 of 1991
Date of Decision: 6.12.2006

Banarsi Dass.

..... Appellant.

Versus

Neel Kanth and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri P.N.Makani, Advocate for the appellant.
Shri S.K.Kapoor, Advocate for the respondents.

....

Mahesh Grover,J.

The present Regular Second Appeal at the behest of the defendant is directed against judgment dated 16.3.1991 of the Court of the Additional District Judge, Karnal (hereinafter described as `the lower Appellate Court') by which the findings recorded by the Court of Sub Judge IIIrd Class, Karnal (for brevity, `the trial Court') in its judgment dated 21.9.1990 were reversed.

Briefly stated the facts of the case are that Neel Kanth- plaintiff (since deceased and presently represented by his legal heirs) through his wife-Smt. Khazani Devi (now dead) filed a suit for possession of ground

floor of House No.180, Ward No.XII, Patwan Mohalla, Karnal against the defendant-appellant. It was pleaded that Neel Kanth along with his brothers Brij Bhusan and Ram Kishan (respondent nos. 2 and 3 herein) had inherited the aforementioned house from Smt. Krishani widow of Siri Dhar, their brother, on the basis of succession certificate issued in Case No.16 of 1985, decided on 13.1.1986 because Siri Dhar, who pre-deceased Smt.Krishani, had died issueless. It was alleged that the appellant had trespassed on ground floor of the aforementioned house and had established his possession unauthorisedly.

The appellant resisted the suit and set up a plea of adverse possession.

On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is entitled for possession as claimed for?OPP
2. Whether the plaintiff has no locus standi to file and maintain the present suit?OPD
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the suit is barred by the principle of res judicata?OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD
7. Whether the plaintiff has got no cause of action?OPD

8. Whether the suit is barred by limitation?OPD

9. Relief.

After appraisal of the evidence on record as adduced by the respective parties, the learned trial Court rejected the plea of the plaintiff and dismissed the suit.

In appeal, the lower Appellate Court reversed the findings of the trial Court and decreed the suit. This has resulted in the present appeal.

I have heard learned counsel for the parties and perused the record.

In the written statement, a plea of adverse possession was taken by the appellant without giving necessary details as to how he entered the possession of the first floor of the house in question and as to when the possession became hostile. The plea of adverse possession is a failing plea taken to undermine the claim of the original owner and so, it has to be treated with circumspection. In the absence of any details as reflected in the pleadings, the plea of adverse possession cannot be accepted. No evidence had been led to show that the appellant was in open and hostile possession to the knowledge of the true owner, i.e. Neel Kanth and his brothers, for a period of 12 years. Rather, the evidence suggests to the contrary.

That apart, the appellant had also tried to set up a case of ownership on the strength of a Will allegedly executed by one Munshi Ram, who was living in the ground floor of the house in question since long. The plea of ownership as sought to be raised by the appellant and the plea of adverse possession are mutually destructive of each other. In the plea of adverse possession, the ownership of the true owner is admitted, but when a Will is sought to be set up, then the person doing so, claims ownership as

devolving upon him on the strength of such Will. Both these pleas are inconsistent and not tenable.

Besides, no substantial question of law has been shown to have arisen in the present appeal and the same is devoid of any merit and is dismissed as such.

December 06,2006 (Mahesh Grover)
"SCM" Judge